

22-CV-0675

CAUSE NO. 22-CV-0675-~~A~~

SALT & PEPPER RESTAURANTS, INC.	§	IN THE DISTRICT COURT
	§	
<i>Plaintiff/Garnishor,</i>	§	
	§	
vs.	§	GALVESTON COUNTY, TEXAS
	§	
TIGHT ENDS SPORTS BAR & GRILL, LLC	§	
and TIMOTHY DUNGAN	§	
	§	
<i>Defendants,</i>	§	56TH JUDICIAL DISTRICT
	§	
vs.	§	
	§	
BANK SOUTH, N.A.	§	
	§	
<i>Garnishee.</i>	§	JUDICIAL DISTRICT

**PLAINTIFF'S EMERGENCY APPLICATION FOR
PREJUDGMENT WRIT OF GARNISHMENT**

Plaintiff/Garnishor Salt & Pepper Restaurants, Inc. ("Plaintiff") files this application for prejudgment writ of garnishment against Bank South, N.A., Garnishee, for the debt owed by Tight Ends Sports Bar & Grill, LLC and Timothy Dungan ("Debtors") and, in support thereof, would respectfully show the following:

DISCOVERY

1. Plaintiff/Garnishor Salt & Pepper Restaurants, Inc. intends to conduct discovery pursuant to Rule 190.3 (Level 2) of the Texas Rules of Civil Procedure.

PARTIES

2. Plaintiff is a corporation with its principal place of business in Fort Bend County, Texas.

3. Garnishee Bank South, N.A. ("Garnishee") is a federal banking institution. Garnishee transacts business in Texas but does not maintain a registered agent in this state.

Accordingly, Garnishee may be served with process by serving the Texas Secretary of State at 1019 Brazos, Austin, Texas as its agent for service. *See* Tex. Bus. Orgs. Code § 5.251(2)(B).

FACTUAL BACKGROUND

4. On May 20, 2016, Salt & Pepper, as Landlord, and Tight Ends, as Tenant, entered into a lease agreement (the “Lease Agreement”). *See* declaration attached as Exh. 1. By the terms of the Lease, Landlord leased to Tenant for a period of fifteen (15) years commercial space commonly as known as 2502 Gulf Freeway, League City, Galveston County, Texas 77573. *Id.* Pursuant to the Lease Agreement, Day Star Restaurant Holdings, LLC (the “Guarantor”) agreed to be jointly liable for all obligations imposed upon Tight Ends, including but not limited to, full payment of all amounts due and owing to Landlord. *Id.*

5. As set forth in the Lease Agreement, Tenant agreed to pay Landlord monthly rent in the amount of \$32,000 (the “Basic Rent”). *Id.* After four years, the Basic Rent increased according to the CPI index. In addition, Tenant was responsible for paying monthly taxes, insurance, utilities and other operating costs. *Id.*

6. Starting in April of 2020, Tenant failed to pay the Basic Rent, monthly taxes, and insurance. In addition, in violation of the Lease Agreement, Tenant failed to provide evidence of insurance, certified financials, and allowed its guarantor to be insolvent and cease to exist. Tenant’s defaults continued throughout 2020, 2021, and 2022. *Id.*

7. Despite adequate notice, Tenant’s balance remains unpaid and Tenant is in default for past and future rent and other obligations under the lease. At present, Tenant owes Landlord a liquated amount in back rent, taxes and insurance of \$352,931.44. In March of 2022, Landlord’s attorney was negotiating with Tenant’s attorney on the past due rent. After coming to what Landlord thought was close to an agreement, Tenant, under the cover of night, stole several items belonging

to Landlord and abandoned the Premises. *Id.* Based on Defendants' conduct, it is likely they drain their bank accounts at Bank South if they have notice of this proceeding.

8. Based on wire transfers, Landlord has reason to believe that Bank South has in-hand money belonging to Tenant or Dungan. Based on the facts contained herein, Defendants' debt to Salt & Pepper in the amount of at least \$352,931.44 is just, due, and unpaid. This garnishment is not sought to injure Defendants

9. The last known address of Defendants is 1603 Wildfire Lane, Frisco, TX 75033.

APPLICATION FOR GARNISHMENT

10. To Plaintiff's knowledge, Defendants do not possess property in Texas subject to execution that is sufficient to satisfy the above-described claim. *See* Exh. 1.

11. Plaintiff has reason to believe, and does believe, that Garnishee, a national banking institution, has in-hand effects belonging to Defendant.

12. Plaintiff is not seeking to injure or harass Garnishee or Defendants by bringing a writ of garnishment. Plaintiff will show that Defendant owe money belong to it. Plaintiff will show that Defendants have failed and refused to turn over the proceeds. Plaintiff will further show in the event Defendant spend, transfer, or otherwise dispose of the funds made the subject of Plaintiff's claim, Plaintiff will likely not be able to recover its damages. *See* Exh. 1. Therefore, Plaintiff requests the Court fix the amount of its bond and Defendants' replevy bond and order the clerk to issue a writ of garnishment, all in accordance with Rule 658 of the Texas Rules of Civil Procedure.

13. Based on the foregoing, Plaintiff seeks a garnishment of any account at Bank South N.A. held under the names of Tight Ends Sports Bar & Grill LLC (including account number 2015972) Tim Dungan, or any variation thereof.

14. This application is supported by the affidavit of Mohammed Amin Lakhani a person having knowledge of the relevant facts. Mr. Lakhani's affidavit is incorporated and adopted herein for all purposes.

PRAYER

WHEREFORE, Plaintiff requests the Court issue a prejudgment writ of garnishment, and that Plaintiff have judgment against Garnishee to satisfy the claim as provided by law, together with all costs of court, and such other relief to which Plaintiff may be justly entitled. Plaintiff further requests that the Court fix the amount of Plaintiff's bond and Defendants' replevy bond, all in accordance with Rule 658 of the Texas Rules of Civil Procedure.

Respectfully submitted,

GRAY REED

By: /s/ Preston T. Kamin
Preston T. Kamin
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ATTORNEYS FOR PLAINTIFF

imposed upon Tight Ends, including but not limited to, full payment of all amounts due and owing to Landlord.

4. As set forth in the Lease Agreement, Tenant agreed to pay Landlord monthly rent in the amount of \$32,000 (the "Basic Rent"). After four years, the Basic Rent increased according to the CPI index. In addition, Tenant is responsible for paying monthly taxes, insurance, utilities and other operating costs.

5. Starting in April of 2020, Tenant failed to pay the Basic Rent, monthly taxes, and insurance. In addition, in violation of the Lease Agreement, Tenant failed to provide evidence of insurance, certified financials, and allowed its guarantor to be insolvent and cease to exist. Tenant's defaults continued throughout 2020, 2021, and 2022.

7. Despite adequate notice, Tenant's balance remains unpaid and Tenant is in default for past and future rent and other obligations under the lease. At present, Tenant owes Landlord a liquated amount in back rent, taxes and insurance of \$352,931.44.

8. Tenant allowed the Guarantor to forfeit its right to do business in the State of Texas. Specifically, on or about January 26, 2018, the Guarantor's right to transact business in the state of Texas was revoked. Additionally, Tenant is affiliated with another entity in Plano and allowed its charter to be revoked. Based on research performed, I do not think Tenant or Dungan possess any assets in Texas sufficient to satisfy a judgment against them for rent and other obligations owed. After coming to what Landlord thought was close to an agreement, Tenant failed and under the cover of night, took several items belonging to Landlord and abandoned the Premises. Like he did at the Premises, I believe he will drain his bank account immediately.

9. Based on wire transfers, I have reason to believe that Bank South has in-hand money belonging to Tenant or Dungan. Based on the facts contained herein, Defendants' debt to Salt & Pepper in the amount of at least \$352,931.44 is just, due, and unpaid.

11. This garnishment is not sought to injure Defendants.

My name is Mohammed Amin Lakhani, my date of birth is July 09, 1960, and my address is 17322 Kilmahew Pl, Richmond, TX 77407. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Harris County, State of Texas, on the 25th day of April, 2022.

A handwritten signature in black ink, appearing to read 'Mohammed Amin Lakhani', is written above a horizontal line.

MOHAMMED AMIN LAKHANI

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

LaTrinda Miles on behalf of Preston Kamin
 Bar No. 24062817
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 Envelope ID: 63914325
 Status as of 4/26/2022 1:29 PM CST

Associated Case Party: Salt & Pepper Restaurants, Inc.

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Preston TKamin		pkamin@grayreed.com	4/26/2022 1:18:57 PM	SENT
Tyler J.McGuire		tmcguire@grayreed.com	4/26/2022 1:18:57 PM	SENT

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Jackie Kish		jkish@grayreed.com	4/26/2022 1:18:57 PM	SENT